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9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE EASTERN DISTRICT OF WASHINGTON**

12 **LYNDA THOMAS,** ) Case No. CV-10-067-RMP  
13 )  
14 Plaintiff, ) **AMENDED COMPLAINT**  
15 )  
16 vs. )  
17 )  
18 **APEX FINANCIAL** )  
19 **MANAGEMENT, LLC,** )  
20 )  
21 Defendant. )

22 **NATURE OF ACTION**

23 1. This is an action brought under the Fair Debt Collection Practices  
24 Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, the Telephone Consumer Protection  
25 Act ("TCPA"), 47 U.S.C. § 227, and the Washington Collection Agency Act  
26 ("WCAA"), Revised Code of Washington, Chapter 19.16.

27 **JURISDICTION AND VENUE**

28 2. This Court has jurisdiction under 15 U.S.C. § 1692k(d), 47 U.S.C. §  
227(b)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

**PARTIES**

4. Plaintiff, Lynda Thomas (“Plaintiff”), is a natural person who at all relevant times resided in the State of Washington, County of Okanogan, and City of Riverside.

5. Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C. § 1692a(3), and a “debtor” as defined by Wash. Rev. Code § 19.16.100(11).

6. Defendant, Apex Financial Management, LLC, (“Defendant”) is a limited liability company who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. §1692a(5).

7. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6), and a “licensee,” as defined by Wash. Rev. Code § 19.16.100(9).

8. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendant.

1           9. Plaintiff's obligation, or alleged obligation, owed or due, or asserted  
2 to be owed or due a creditor other than Defendant, arises from a transaction in  
3 which the money, property, insurance, or services that are the subject of the  
4 transaction were incurred primarily for personal, family, or household purposes.  
5

6           10. Defendant uses instrumentalities of interstate commerce or the mails  
7 in a business the principal purpose of which is the collection of any debts, and/or  
8 regularly collects or attempts to collect, directly or indirectly, debts owed or due,  
9 or asserted to be owed or due another  
10

11           11. On November 6, 2009 Defendant contacted Plaintiff by placing a  
12 telephone call to her cellular telephone number, in effort to collect from Plaintiff  
13 an obligation, or alleged obligation, owed or due, or asserted to be owed or due a  
14 creditor other than Defendant.  
15

16           12. Upon information and belief, on November 6, 2009, Defendant  
17 willfully and knowingly utilized an automatic telephone dialing system to contact  
18 Plaintiff, by placing a telephone call to her cellular telephone number, in effort to  
19 collect from Plaintiff an obligation, or alleged obligation, owed or due, or asserted  
20 to be owed or due a creditor other than Defendant.  
21

22           13. On November 6, 2009, Plaintiff spoke with one of Defendant's  
23 representatives, Ryan Bolins.  
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1           14. Defendant's representative informed Plaintiff that Defendant was a  
2 debt collector, and that Defendant had contacted her to collect a debt owed or due  
3 a creditor other than Defendant.  
4

5           15. Defendant's representative informed Plaintiff that should she fail to  
6 immediately pay to Defendant the debt owed or due a creditor other than  
7 Defendant, that Defendant could and/or would add collection fees to the amount  
8 owed or due a creditor other than Defendant.  
9  
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11           16. Plaintiff thereafter informed Defendant's representative that she  
12 disputed the validity of debt alleged owed or due a creditor other than Defendant.  
13

14           17. Plaintiff additionally requested of Defendant that it provide all  
15 necessary documentation validating the debt alleged owed or due a creditor other  
16 than Defendant.  
17

18           18. On November 12, 2009 Defendant contacted Plaintiff, by placing a  
19 telephone call to her cellular telephone number, in effort to collect from Plaintiff  
20 an obligation, or alleged obligation, owed or due, or asserted to be owed or due a  
21 creditor other than Defendant.  
22

23           19. Upon information and belief, on November 12, 2009, Defendant  
24 willfully and knowingly utilized an automatic telephone dialing system to contact  
25 Plaintiff, by placing a telephone call to her cellular telephone number, in effort to  
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1 collect from Plaintiff an obligation, or alleged obligation, owed or due, or asserted  
2 to be owed or due a creditor other than Defendant.  
3

4 20. On November 12, 2009, Plaintiff spoke with one of Defendant's  
5 representatives, Hillary Finney.  
6

7 21. Defendant's representative informed Plaintiff that Defendant was a  
8 debt collector, and that Defendant had contacted her to collect a debt owed or due  
9 a creditor other than Defendant.  
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11 22. Plaintiff thereafter informed Defendant's representative that she  
12 disputed the validity of the debt alleged owed or due a creditor other than  
13 Defendant.  
14

15 23. Plaintiff additionally requested of Defendant that it provide all  
16 necessary documentation validating the debt alleged owed or due a creditor other  
17 than Defendant.  
18

19 24. On November 21, 2009, Plaintiff received from Defendant a written  
20 letter dated November 13, 2009, and postmarked November 16, 2009, demanding  
21 that Plaintiff pay in full the debt alleged owed or due a creditor other than  
22 Defendant.  
23

24 25. Defendant's letter dated November 13, 2009, and postmarked  
25 November 16, 2009, purportedly included provisions and disclosures required by  
26 the FDCPA at section 1692g.  
27  
28

1           26. On November 23, 2009, Plaintiff mailed to Defendant a written letter  
2 disputing the validity of the debt alleged owed or due a creditor other than  
3 Defendant.  
4

5           27. On November 24, 2009, Plaintiff mailed to Defendant, via certified  
6 mail, a second written letter disputing the validity of the debt alleged owed or due  
7 a creditor other than Defendant.  
8

9           28. Defendant received, and signed for, Plaintiff's November 24, 2009  
10 written letter disputing the validity of the debt alleged owed or due a creditor  
11 other than Defendant, on November 30, 2009.  
12

13           29. On November 25, 2009, Defendant placed a telephone call to  
14 Plaintiff's cellular telephone number, in effort to collect from Plaintiff an  
15 obligation, or alleged obligation, owed or due, or asserted to be owed or due a  
16 creditor other than Defendant.  
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18           30. Upon information and belief, on November 12, 2009, Defendant  
19 willfully and knowingly utilized an automatic telephone dialing system to place a  
20 telephone call to Plaintiff's cellular telephone number, in effort to collect from  
21 Plaintiff an obligation, or alleged obligation, owed or due, or asserted to be owed  
22 or due a creditor other than Defendant.  
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**COUNT I**

31. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 30.

32. Defendant violated 15 U.S.C. § 1692g(a) in failing to provide Plaintiff with required written notice either in its initial communication with Plaintiff, or in writing within five (5) days thereafter.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692g(a);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

**COUNT II**

33. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 30.





1 telephone number in effort to collect from Plaintiff an obligation, or alleged  
2 obligation, owed or due, or asserted to be owed or due a creditor other than  
3 Defendant.  
4

5 WHEREFORE, Plaintiff prays for relief and judgment, as follows:  
6

- 7 a) Adjudging that Defendant violated 47 U.S.C. § 227(b)(1)(A);  
8 b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C. §  
9 227(b)(3)(B), in the amount of \$500.00 per violation;  
10 c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C. §  
11 227(b)(3)(C), in the amount of \$1,500.00 per violation;  
12 d) Awarding Plaintiff actual damages, pursuant to 47 U.S.C. §  
13 227(b)(3)(B);  
14 e) Awarding Plaintiff reasonable attorneys' fees and costs incurred in  
15 this action;  
16 f) Awarding Plaintiff any pre-judgment and post-judgment interest as  
17 may be allowed under the law;  
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22 **COUNT IV**  
23

24 37. Plaintiff repeats and re-alleges each and every allegation contained  
25 in paragraphs 1 through 30.  
26

27 38. Defendant violated RCWA 19.16.250 by (1) communicating with  
28 Plaintiff in a manner as to harass, intimidate, threaten, or embarrass Plaintiff; (2)

1 communicating with Plaintiff and representing or implying that the obligation, or  
2 alleged obligation, owed or due, or asserted to be owed or due a creditor other  
3 than Defendant, may be or has been increased by the addition of attorney fees,  
4 investigation fees, service fees, or any other fees or charges when in fact such  
5 fees or charges may not legally be added to the existing the alleged obligation,  
6 owed or due, or asserted to be owed or due a creditor other than Defendant; (3)  
7 communicating with Plaintiff and threatening to take any action against Plaintiff  
8 which Defendant could not legally take at the time the threat was made; and (4)  
9 communicating with Plaintiff and attempting to collect in addition to the principal  
10 amount the obligation, or alleged obligation, owed or due, or asserted to be owed  
11 or due a creditor other than Defendant, any sum other than allowable interest,  
12 collection costs or handling fees expressly authorized by statute.  
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18 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 19 a) Adjudging that Defendant violated RCWA 19.16.250;  
20  
21 b) Awarding Plaintiff actual damages, pursuant to RCWA 19.86.090;  
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23 c) Awarding Plaintiff actual damages trebled, pursuant to RCWA  
24 19.86.090;  
25  
26 d) Awarding Plaintiff reasonable attorneys' fees ands costs incurred in  
27 this action;  
28

1 e) Awarding Plaintiff any pre-judgment and post-judgment interest as  
2 may be allowed under the law.  
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4 **TRIAL BY JURY**

5 39. Plaintiff is entitled to and hereby demands a trial by jury.  
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7  
8 Respectfully submitted this 10th day of May, 2010.  
9

10 s/Jon N. Robbins

11 Jon N. Robbins

12 WEISBERG & MEYERS, LLC

13 Attorney for Plaintiff  
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